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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 01/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/848,465

Applicant(s)

PROGLHOF ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-14, drawn to an absorbent core, classified in class 604.
  - II. Claims 15 and 16, drawn to a method of manufacturing, classified in class 156.The inventions are distinct, each from the other because of the following reasons:
2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the superabsorbent material can be adhered to the paper sheet by methods other than adhesive bonding.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with James Barr on 9/27/02 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15 and 16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

5. The information disclosure statement filed 2/15/02 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. A Form 1449 is not present in the file. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Plischke et al. USPN 5977014.

As to claims 1 and 10, Plischke discloses a sanitary absorbent article **40** comprising: an upper layer **50** pervious to liquid; a lower layer **51** impervious to liquid; a transfer layer **42** (col. 16, lines 38-44); and, an absorbing core having an upper part and a lower part, said core further comprising an absorption sheet **41,43** and a superabsorbent material **44** adhered to an inner surface of the sheet, said sheet consisting essentially of a wet laid paper (col. 26, lines 51-57) and comprising two opposite longitudinal sides, each said longitudinal side having been bent onto the inner surface (Figure 9).

As to claims 2 and 11, Plischke discloses the absorbing core is embossed and perforated (Figures 15-18).

As to claims 3 and 12, see Figure 17. 3.

As to claim 8, Plischke discloses the superabsorbent material has a Performance under Pressure capacity value of at least about 23 g/g under a confining pressure of 0.7 psi (col. 24, line 67 through col. 25, line 10).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 4, 5, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plischke in view of Hoey et al. USPN 3403681 and further in view of Schreiber USPN 2418907. Plischke discloses the present invention substantially as claimed. However, Plischke does not disclose the absorbent core comprises 2 to 15 elevations per  $\text{cm}^2$  both in the upper part and in the lower part, 2 to 15 perforations per  $\text{cm}^2$  both in the upper part and in the lower part. Hoey discloses an apertured absorbent core having apertures spaced at 10 per square inch. Hoey does not disclose the exact aperture range. However, Hoey recognizes the aperture range can be varied and this will affect the liquid distribution and comfort of the pad ('681 col. 4, lines 14-29). Hoey, therefore recognizes the liquid distribution and comfort of the user is a result effective variable of aperture range. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Plischke with the claimed range of apertures, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Plischke/Hoey do not disclose the apertures being present on the upper and lower part of the core. Schreiber discloses an absorbent system with embossed surfaces on upper and lower parts of the core (Figure 3) for the benefit of providing pockets to retain materials in the core ('907 col. 4, lines 18-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the invention of Plischke/Hoey with an embossed surface on the upper and lower parts of the core for the benefits disclosed in Schreiber.

11. Claims 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plischke in view of Goldman et al. USPN 5669894.

As to claims 6 and 9, Plischke does not disclose the superabsorbent material has an absorbency under load value of at least about 24 ml saline per gram of superabsorbent material and a Saline Flow Conductivity value of at least about  $30 \times 10^{-7} \text{ cm}^3 \text{ sec/g}$ . Goldman discloses an absorbent article having superabsorbent materials having an absorbency under load value of at least about 24 ml saline per gram of superabsorbent material (col. 4, lines 24-34) and a Saline Flow Conductivity value of at least about  $30 \times 10^{-7} \text{ cm}^3 \text{ sec/g}$  ('894 Abstract) for the purpose of minimizing gel blocking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the superabsorbent of Goldman in the invention of Plischke for the benefits disclosed in Goldman.

As to claim 7, Plischke/Goldman do not disclose the superabsorbent material has a porosity of at least about 0.15. the claimed porosity. However, Plischke/Goldman teaches porosity is an important measurement of the effectiveness of the superabsorbent ('894 col. 13, line 35-63). It is evident that Plischke/Goldman has a value for the porosity. Plischke/Goldman recognizes the porosity can be varied and this will affect the permeability of the article. Plischke/Goldman, therefore recognizes the permeability (SFC) of the superabsorbent layer is a result effective variable of porosity of the superabsorbent. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Plischke/Goldman with the

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claimed porosity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens  
Examiner  
Art Unit 3761



January 27, 2003

  
**WEILUN LO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**